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PROFESSIONAL SECURITY CONSULTANTS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

THOMAS VAN ZANDT,

Plaintiff,

vs.

CITY OF SAN JOSE, DANIEL PFEIFER, MARK
NATIVIDAD, ANTHONY WEIR, OFFICER
HIGGINS, Individually and as Employees of the
CITY OF SAN JOSE, TARGET STORES, INC.,
WESTFIELD LLC., PROFESSIONAL SECURITY
CONSULTANTS, and Does 1-10, Inclusive,

Defendants.

Case No.: 5:07-CV-04987-JF

**DEFENDANT PROFESSIONAL
SECURITY CONSULTANTS'
ANSWER TO FIRST AMENDED
COMPLAINT**

Defendants, PROFESSIONAL SECURITY CONSULTANTS (hereinafter "PSC") hereby
admit, deny and allege the following in response to being named as defendants in counts 7,8 and 9
only of Plaintiffs' Complaint as follows:

I. JURISDICTION

1. Answering paragraph 1-3, PSC lacks sufficient information and belief to admit or
deny the allegations contained in paragraph number 1-3, and based upon said lack of information or
belief, deny each and every allegation contained therein.

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II. PARTIES

2. Answering paragraph 4-16, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 4-16, and based upon said lack of information or belief, deny each and every allegation contained therein.

3. Answering paragraph 17, PSC admits to being an employee and/or independent contractor for/with Westfield, LLC., providing security services to Westfield, LLC., at the time and location of the incidents complained herein. PSC admits that the security guard defendants were not employed by Westfield, LLC., but were employed by PSC.

4. Answering paragraph 18 - 20, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 18 - 20, and based upon said lack of information or belief, deny each and every allegation contained therein.

III. FACTUAL ALLEGATIONS

5. Answering paragraph 21- 40, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 21 - 40, and based upon said lack of information or belief, deny each and every allegation contained therein.

IV. DAMAGES

6. Answering paragraph 41- 45, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 41 - 45, and based upon said lack of information or belief, deny each and every allegation contained therein.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF CIVIL RIGHTS (42 U.S.C. 1983 - ARREST)

[VAN ZANDT Against PFEIFER, WEIR, NATIVIDAD, HIGGINS]

7. Answering paragraph 46, PSC hereby incorporates its answers to paragraphs 1 through 44, inclusive, as though fully set forth herein.

8. Answering paragraph 47- 49, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 47 - 49, and based upon said lack of information or belief, deny each and every allegation contained therein.

SECOND CAUSE OF ACTION

VIOLATION OF CIVIL RIGHTS (42 U.S.C. 1983 - SEARCH OF PERSON)

[VAN ZANDT Against PFEIFER, WEIR, NATIVIDAD, HIGGINS]

9. Answering paragraph 50, PSC hereby incorporates its answers to paragraphs 1 through 44, inclusive, as though fully set forth herein.

10. Answering paragraph 51- 53, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 51 - 53, and based upon said lack of information or belief, deny each and every allegation contained therein.

THIRD CAUSE OF ACTION

VIOLATION OF CIVIL RIGHTS (42 U.S.C. 1983 - SEARCH OF VEHICLE)

[VAN ZANDT Against PFEIFER, WEIR, NATIVIDAD, HIGGINS]

11. Answering paragraph 54, PSC hereby incorporates its answers to paragraphs 1 through 44, inclusive, as though fully set forth herein.

12. Answering paragraph 55- 57, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 55 - 57, and based upon said lack of information or belief, deny each and every allegation contained therein.

FOURTH CAUSE OF ACTION

VIOLATION OF CIVIL RIGHTS (C.C. 52.1 Banes Civil Rights Act)

[VAN ZANDT Against PFEIFER, WEIR, NATIVIDAD, HIGGINS, DOE 1 and DOE 2]

13. Answering paragraph 58, PSC hereby incorporates its answers to paragraphs 1 through 44, inclusive, as though fully set forth herein.

14. Answering paragraph 59-64, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 59 - 64, and based upon said lack of information or belief, deny each and every allegation contained therein.

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FIFTH CAUSE OF ACTION

BATTERY

[VAN ZANDT Against Doe 1]

15. Answering paragraph 65, PSC hereby incorporates its answers to paragraphs 1 through 44, inclusive, as though fully set forth herein.

16. Answering paragraph 66-68, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 66 - 68, and based upon said lack of information or belief, deny each and every allegation contained therein.

SIXTH CAUSE OF ACTION

BATTERY

[VAN ZANDT PFEIFER, WEIR, NATIVIDAD, HIGGINS]

17. Answering paragraph 69, PSC hereby incorporates its answers to paragraphs 1 through 44, inclusive, as though fully set forth herein.

18. Answering paragraph 70-72, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 70 - 72, and based upon said lack of information or belief, deny each and every allegation contained therein.

SEVENTH CAUSE OF ACTION

INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS

[Plaintiff Against All Defendants]

19. Answering paragraph 73, PSC hereby incorporates its answers to paragraphs 1 through 44, inclusive, as though fully set forth herein.

20. Answering paragraph 74-77, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 74 - 77, and based upon said lack of information or belief, deny each and every allegation contained therein.

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EIGHTH CAUSE OF ACTION

FALSE ARREST / IMPRISONMENT

[Plaintiff Against All Defendants]

21. Answering paragraph 78, PSC hereby incorporates its answers to paragraphs 1 through 44, inclusive, as though fully set forth herein.

22. Answering paragraph 79-81, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 79 - 81, and based upon said lack of information or belief, deny each and every allegation contained therein.

NINTH CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

[Plaintiff Against All Defendants]

23. Answering paragraph 82, PSC hereby incorporates its answers to paragraphs 1 through 44, inclusive, as though fully set forth herein.

24. Answering paragraph 83, PSC lacks sufficient information and belief to admit or deny the allegations contained in paragraph number 83, and based upon said lack of information or belief, deny each and every allegation contained therein.

PRAYER FOR RELIEF

25. In response to Plaintiff's Prayer for Relief, Answering Defendant admit that Plaintiff seeks the requested relief, but deny that Plaintiff is entitled to the relief requested or any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

1. As a separate, distinct, and affirmative defense, PSC allege that the complaint, and each cause of action contained therein, fails to state facts sufficient to constitute a cause of action or to set forth a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. As a separate, distinct, and affirmative defense, PSC allege that this Court lacks subject matter jurisdiction.

THIRD AFFIRMATIVE DEFENSE

3. Answering Defendants allege that the Plaintiff was negligent, reckless, and careless in and about the matters referred to in the Complaint, and that this negligence approximately and concurrently contributed to the events and the damages alleged, if any exist, and that such negligence, recklessness, or carelessness bars or reduces any recovery by each Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

4. Answering Defendants allege that the damages alleged in the Plaintiff's Complaint, if any exists, were caused in whole or in part by the negligence, recklessness, or carelessness of persons or entities other than this answering Defendant, and for which this answering Defendant is not responsible, and that if this answering Defendant is held liable for damages to Plaintiffs, this answering Defendant is entitled to contribution from or indemnification by these other persons, entities or parties on a comparative negligence or false basis and/or to a limitation of their share of any damages according to the proportionate percentage of their liability.

FIFTH AFFIRMATIVE DEFENSE

5. Answering Defendants allege that if Plaintiff sustained damages, that he received his alleged damages and injuries solely because of a risk voluntarily assumed by Plaintiff when the danger of said risk was known or should have been known by him.

SIXTH AFFIRMATIVE DEFENSE

6. Answering Defendants allege that the Plaintiff's claims are barred by the Doctrine of Unclean Hands.

SEVENTH AFFIRMATIVE DEFENSE

7. The Plaintiff's Complaint herein and each and every cause of action contained therein is barred under the Doctrine of Laches.

EIGHTH AFFIRMATIVE DEFENSE

8. By his actions, Plaintiff waived any and all rights which he may have otherwise had to assert against this answering Defendant.

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NINTH AFFIRMATIVE DEFENSE

9. Answering Defendants are informed and believe, and thereon allege, that Plaintiff engaged in conduct and activities with respect to the subject of his Complaint, and by reason of these activities and conduct, is estopped from asserting any claims for damages or seeking any other relief against this answering Defendant.

TENTH AFFIRMATIVE DEFENSE

10. Answering Defendants allege that any prayer by Plaintiff for exemplary or punitive damages as barred by law in that this answering Defendant's alleged actions did not rise to the requisite level of oppression, malice, or fraud pursuant to California Code of Civil Procedure § 3294.

ELEVENTH AFFIRMATIVE DEFENSE

11. Answering Defendants allege that any and all acts alleged by Plaintiff to have been performed by or on behalf of Defendants were performed, if at all, in good faith, without malice, and were based upon legally sufficient justifications.

TWELFTH AFFIRMATIVE DEFENSE

12. Answering Defendants allege that the alleged statements complained of in Plaintiff's Complaint were made without any feelings by Defendant of hatred or ill will for Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Plaintiff, though under a duty to do so, has failed and neglected to mitigate his alleged damages and, therefore, cannot recover against this answering Defendant, whether it is alleged or wise.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Answering Defendants are informed and believe, and thereon allege, that the injuries and damages of which the Plaintiff complains are approximately caused by or contributed to by the acts of Plaintiff, another Defendant, person, and/or other entities, and that these acts were an intervening and superseding cause of the injuries and damages, if any, of which the Plaintiff complains, this barring Plaintiff from any recovery against this answering Defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

15. The conduct of this answering Defendant in regard to the matters alleged in the Plaintiff's Complaint was justified and, by reason of the foregoing, Plaintiff is barred from any recovery

1 against this answering Defendant.

2 **SIXTEENTH AFFIRMATIVE DEFENSE**

3 16. Answering Defendants presently have insufficient knowledge or information on which
4 to form a belief as to whether it may have any additional, as yet unstated, affirmative defenses available.

5 **SEVENTEENTH AFFIRMATIVE DEFENSE**

6 17. Answering Defendants reserves the right to assert additional defenses in the event that
7 discovery indicates that they would be appropriate.

8 **EIGHTEENTH AFFIRMATIVE DEFENSE**

9 18. The Complaint, and each purported cause of action contained therein, is barred in whole
10 or in part, because Professional Security Consultants had an honest, reasonable, good faith belief in the
11 facts on which they base their acts, omissions, and conduct in respect to Plaintiff, if any, and all acts
12 were undertaken for legitimate business reasons.

13 **NINETEENTH AFFIRMATIVE DEFENSE**

14 19. Plaintiffs claim for punitive damages is invalid and that no officer, director, or managing
15 agent of Defendant's corporation had advanced knowledge of the acts complained of, nor did any such
16 person act with conscience disregard for the safety of Plaintiff, nor authorize, ratify, or otherwise
17 approve said conduct alleged in the Complaint as intentional, extreme, outrageous beyond what is
18 tolerable in a civilized society.

19 **TWENTIETH AFFIRMATIVE DEFENSE**

20 20. In doing the acts complained of by Plaintiff, Defendants acted in self-defense and
21 Defendants used no more force than reasonably necessary to prevent impending injury to Defendant.

22 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

23 23. The acts complained of by Plaintiff were committed by Defendants in the course of
24 making a lawful citizen's arrest. In so making this arrest, defendant used only reasonable force.

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WHEREFORE, answering Defendant prays:

1. That Plaintiff take nothing by his First Amended Complaint;
2. That Plaintiff's First Amended Complaint be dismissed with prejudice;
3. That Defendant be awarded its costs of suit, including attorney's fees incurred herein; and
4. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Defendant, PROFESSIONAL SECURITY CONSULTANTS hereby demands trial of this matter by jury

Dated: February 5, 2008

**MANNING & MARDER
KASS, ELLROD, RAMIREZ LLP**

By: 

Sejal Ojha

Attorneys for Defendant,
PROFESSIONAL SECURITY
CONSULTANTS